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***Free World Trade and Social Regulation:  
From National Government to  
Transnational Governance under the WTO  
Intensive Course from 16-30 September 2006***

**Overview**

**Syllabus**

**Course Materials**

**Annex:  
Selected Provisions of Important Agreements**

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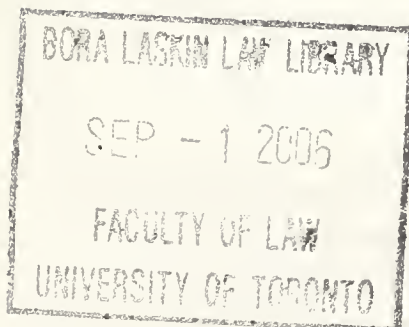
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***Syllabus***

***Unit 1: Introduction***

A) Free Trade and Social Regulation: An overview over the state of the debate

B) Introduction to the WTO System

1. From GATT 1947 to WTO 1994: The WTO-Agreement comprises the results of the Uruguay Round. Its three pillars are GATT 1994, GATS and TRIPS, all pertinent agreements taken together fill 26.000 pages.

2. Important Uruguay Round Agreements

(a) The General Agreement on Trade and Tariffs (GATT)

- Article I: Most Favoured Nation Treatment (MFN)
- Article III: Principle of national treatment
- Article XX(b): Exemption for the protection of life and health
- Article XX(g): Exemption for the conservation of exhaustible natural resources

(b) Agreement on Sanitary & Phytosanitary Measures (SPS Agreement)

(c) Agreement on Technical Barriers to Trade (TBT Agreement)

(d) TRIPS (Agreement on Trade Related Aspects of Intellectual Property Rights) and GATS (General Agreement on Trade in Services)

(e) WTO Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU)

- Objectives and systemic role of the dispute resolution system
- Role of third parties
- Access to appropriate expertise

C) A First Encounter with the Risk Category

D) Readings for the first unit

You will find copies of selected provisions of the agreement in the annex to the materials. Full texts are all available online at [www.wto.org](http://www.wto.org). The TBT and the SPS Agreement will be discussed in some detail in Units 2 and 3.

A summary of the Uruguay Round Agreements: Andreas F. Lowenfeld, *International Economic Law*, Oxford: Oxford UP 2002, 21-44.

Two articles on the risk category:

Prominent and short: Anthony Giddens, Risk and Responsibility, 62 *Modern Law Review* 1-10 (1999).

An sophisticated interdisciplinary introduction: Ortwin Renn, Concepts of Risk: A Classification, in: Sheldon Krinsky and Dominic Golding (eds.), *Social Theories of Risk*, Westport, CN-London: Praeger 1992, 53-79.

## ***Unit 2: Some Analytical Concepts and a first Example of Transnational Governance: Private Transnationalism***

A) Social Regulation (at national level)

B) The Distinction between Product and Process Regulation (at international level)

C) The Turn to Governance (at all levels)

D) Patterns of Transnational Risk Governance: The Example of International Standardization and the TBT Agreement

Technical Regulations

- Definition: Art 1.2 & Annex 1(1)
- Permitted technical regulations: Art 2.2
- Presumptive validity: Art 2.5

Standards

- Definition: Art 1.2 & Annex 1(2)
- Code of Good Practice for the Preparation, Adoption & Application of Standards: Annex 3

Readings:

Harm Schepel, International Harmonisation of Standards, ch. 6 of id., *The Constitution of Private Governance- Product Standards in the Regulation of Integrating Markets*, Oxford Hart 2005, 177-193.

WTO Appellate Body: *EC – Sardines*, WT/DS231/AB/R.

## ***Unit 3: Further Analytical Concepts and a Second Example of Transnational Governance: Food Safety Regulation under the SPS Agreement and the Codex Alimentarius Commission***

A) The SPS Agreement:

1. Scope

- Definition of SPS measures: “Sanitary or phytosanitary measures include ... packaging and labelling requirements directly related to food safety.”
- Basic limitation: Art 2
- Presumptive validity: Art 3.2
- Need for scientific justification: Arts 3.3 & 5



## 2. Relationship with TBT Agreement

B) The Distinction between Risk Assessment and Management and a first Look at the Precautionary Principle

C) The Hormones Case

### Readings:

*EC – Measures Concerning Meat and Meat Products (Hormones)*, Appellate Body Report: WT/DS26/AB/R & WT/DS48/AB/R, 16/1/1998

Alexia Herwig, A. Herwig, Transnational Governance Regimes for Foods Derived from Biotechnology and their Legitimacy', in: Christian Joerges, Inger-Johanne Sand and Gunther Teubner (eds.), *Transnational Governance and Constitutionalism*, Oxford: Hart, 2004, 199-222.

## ***Unit 4: Transnational Environmental Governance and the WTO***

A) The Case for Autonomy in Process Regulation

B) The Case for Transnational Environmental Governance

C) Environmental Governance and WTO Law

### Readings:

*Sea Turtles Case (United States – Import Prohibition of Certain Shrimp & Shrimp Products)*, Panel Report: WT/DS58/R, 15/5/98; Appellate Body Report: WT/DS58/AB/R, 12/10/98)

Joost Pauwelyn, Non-Traditional Patterns of Global Regulation:

Is the WTO 'Missing the Boat'?, in Christian Joerges and Ernst-Ulrich Petersmann (eds.), *Constitutionalism, Multilevel Trade Governance and Social Regulation*, Oxford: Hart 2006, 199-227 (forthcoming).

## ***Unit 5: The Transatlantic Controversy on the Regulatory Reasonableness of Precaution and Science: Deepening the analysis of the hormones Hormones Case; Preparing for the GMO Case***

A) Science v. Anxieties?

B) Caution with Precaution?

C) American and European Positions

Olivier Godard, Social Decision-Making Under Conditions of Scientific Controversy, Expertise and the Precautionary Principle, EUII RSC Working Paper 1996/6, also in: Christian Joerges, Karl-Heinz Ladeur and Ellen Vos (eds.), *Integrating Scientific*

*Expertise into Regulatory Decision-Making. National Traditions and European Innovations*, Baden-Baden: Nomos 1997, Chapter 2.

Cass W. Sunstein, *Precautions Against What? The Availability Heuristic and Cross-Cultural Risk Perceptions*, AEI Brookings Joint Center for Regulatory Studies, Working Paper 4-22 (2004).

## **Unit 6: Genetically Modified Food and the WTO**

- A) The transatlantic controversy on GMOs – history and interest configurations
- B) Cultural and/or Political Academic Controversies
- C) Framing of the Issues under WTO Law

### **Readings:**

David Winikoff, Sheila Jasanoff, Lawrence Busch, Robin Grove-White and Bryan Wynne, *Adjudicating the GM Food Wars: Science, Risk and Democracy in World Trade Law*, 30 *Yale Journal of International Law* (2005), 81-123.

European Communities – Measures Affecting the Approval and marketing of Biotech Products, interim report, WT/DS291/292/293, 7 February 2006 (summary). The interim report is over 1000 pages long. The “rough summary” provided by [worldtradelaw.net/](http://worldtradelaw.net/) has still 76 pages. You may use them or, alternatively the Conclusions of the Panel’s Interim Report.

## **Unit 8: Concluding Reflections on the Legitimacy Problematic of Transnational Governance (Constitutionalization)**

- A) Terminological Controversies
- B) Law-mediated Legitimacy?
- C) Constitutionalism Beyond States?
- D) Linking Social Philosophy, International Relations Theory and Constitutional Theory

### **Readings:**

Patrizia Nanz, *Democratic Legitimacy of Transnational Trade Governance: A View from Political Theory*, in Christian Joerges and Ernst-Ulrich Petersmann (eds.), *Constitutionalism, Multilevel Trade Governance and Social Regulation*, Oxford: Hart 2006, 59-82.

Deborah Z. Cass, *Against Constitutionalization*, in id., *The Constitutionalization of the WTO*, Oxford: Oxford UP 2005, 207-237.

## ***Annex: Possible Topics of Research Papers***

### I Some Instructions


1. Students will be required to write a 10-12 page research paper, which will be graded on an Honours/Pass/Fail basis. Papers must be delivered to the Records Office three weeks following the last day of the course (the date will be set by the administration). Graduate students are graded on the graduate grading scale (this will be provided).
2. Students are expected to consult a range of primary and secondary materials.
3. Their essays must be footnoted and all sources must be properly cited. A case list and bibliography must be submitted with the essay showing all sources consulted.
4. Please take the page limit seriously. The case list and bibliography are not subject to the word limit.
5. Students may choose an essay topic from the list below. But you should feel free to develop your own topics topic in consultation with me.

### II. Some Suggestions

1. All of the cases in the syllabus have attracted enormous attention. It has become virtually impossible to read these comments comprehensively. The cases are nevertheless a good target for all sorts of analytical and interpretative exercises. You could look at them in the light of the categories we are dressing in the course and ask:
  - How does the Hormones case deal with science and anxieties?
  - What concept of consumer sovereignty or autonomy does the GMO Interim Report defend?
  - What are the difficulties the GMO panel report sees with the labelling of GMOs ?
  - What are the perspectives for the integration of environmental protection into trade law after the Shrimps case?
  - How do theses cases draw the borderline between legal and political questions?
2. Institutional issues abound
  - Is the WTO a proper forum for the evaluation of the policies of WTO member?
  - Is it correct to characterise the WTO as an international product safety rule maker?
  - "The failure of the SPS Agreement to recognise any substantive precautionary principle suggests that it will be of little assistance in protecting life, health or the environment." DISCUSS
3. Distributional implications and social standards are not directly addressed in the materials. But you may be interested to take them up and ask
  - Do the WTO agreements involve a form of "safety-imperialism" for developing countries?
  - Should social norms or rights be integrated into WTO law?

You will develop your own questions and I am certainly willing to comment.





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